

ABANA REVIEW

جمعية المصرفيين العرب في شمال أمريكا



Arab Bankers Association of North America

LEGAL UPDATE

New Court Ruling on Overseas Deposits

By George F. Hritz, Esq. and Samar S. Ali

Middle Eastern and other international banks with offices in New York may want to take note of a recent decision by a federal judge in New York who ruled in favor of the Commercial Bank of Kuwait ("CBK"), a stakeholder of customer funds held in accounts in Kuwait and the subject of a turnover order application

depositors from private claims in New York.

This case followed 2004 decision in which the same judgment creditor obtained a judgment in the United States District Court for the District of Columbia, domesticated that judgment in New York and then sought a New York turnover order with respect to customer

This decision will protect international banks and overseas depositors from private claims in New York.

brought by a judgment creditor in the U.S. In *Mones v. CBK*, the Honorable Shira Scheindlin of the United States District Court of the Southern District of New York, denied the judgment creditor's petition to have CBK held in contempt of court for its refusal to pay over to the judgment creditor funds held in customers' accounts outside of New York. Judge Scheindlin held that under New York law, she did not have the power to reach assets held by a bank outside of the United States, whether or not the bank also had a New York office and held that she could not order CBK to transfer assets from Kuwait into New York. This new decision should help protect international banks and their overseas

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funds held on account in the Kuwait main office of a different Kuwaiti bank that had a New York office. A different judge in the same court ordered that other bank to turn over those customers' overseas funds. Judge Scheindlin reviewed that ruling and rejected its application in her own decision.

In deciding this important case, Judge Scheindlin also cited another recent New York precedent, *Koehler v. Bank of Bermuda, Ltd*, which held that, "it is a well-established principle that a New York court cannot attach property not within its jurisdiction." In other words, regardless of the court's personal jurisdiction over a financial intermediary (e.g., a New York branch), there is no authority under New York law that would require a financial intermediary to turn over property located outside New York. The full opinion is appears on the ABANA website at www.arabbankers.org. ■

ISLAMIC FINANCE: PLAYERS, PRODUCTS AND INNOVATIONS

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Taher Makkiyah of Unicorn Investment Bank.

regulation is not the only factor to Islamic finance fulfilling its full potential. The industry also needs to sort out some basic issues in the market. These include risk concentration, a lack of critical mass, latent interest rate risk, liquidity mismatching, and standardization of core contracts, instruments and disclosure practices."

ABANA's Islamic Finance Conference was organized by Hani Beyhum of Olayan America Corporation, Monir Barakat of Wafra Investment Advisory Group, Paul Homsy, Esq. of Guibord and Homsy, Samer Khanachet of United Gulf Management, Geoffrey Milton of Capital Investment Solutions, A. Rushdi Siddiqui of Dow Jones Islamic Index Group, Isam Salah of King & Spalding and Omar Wohabe of Wohabe Law Offices. The conference made possible by the support of Unicorn Investment Bank, Arcapita, Inc, Al Fanar, Wafra Investment Advisory Group, Vinson & Elkins, Guidance Financial, King & Spalding and Goldman Sachs International. Media sponsorship was provided by ISI Emerging Market and Zawya. ■